



south dakota
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MEMORANDUM

TO: Special Education Directors

FROM: Ann Larsen, Director
Special Education Programs

SUBJECT: Winter Update

DATE: January 2, 2007

I would like to wish everyone a happy New Year. When I remember the past year I am thankful for all of you who work day in and day out to provide the best education for students with disabilities in our great state. Each year the demands on you increase. First, we had No Child Left Behind and the new issues of Adequate Yearly Progress and accountability. Then with the reauthorization of IDEA we now have a State Performance Plan with indicators, district determinations and more accountability. The need for valid and reliable data is more important now than ever. Please know that we in Special Education Programs know how hard this past year has been for you and we understand the stress you are feeling. With the onset of the New Year I want to thank you for your support and assure you of our commitment to assist you at the district level in every way we can to meet the new demands required with the reauthorization of IDEA 2004 and the State Performance Plan.

EVALUATION TIMELINE

South Dakota will continue to use the 25 school day timeline for completing the evaluation process. OSEP has said that the state determined timeline for evaluation does not have to be within the 60 day timeline established in the regulation if a state already had a timeline in place. The excel spreadsheet can be found at <http://doe.sd.gov/oess/specialed/SPP/index.asp> under Indicator 11.

ACCESSING PARENTS' MEDICAID BENEFITS TO PROVIDE CERTAIN SERVICES

Under 300.154, a public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services with parent permission. There are some exceptions though, the district:

- May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE;
- May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided, but may pay the cost that the parents otherwise would be required to pay;
- May not use a child's benefits under a public benefits or insurance program if that use would--
 - Decrease available lifetime coverage or any other insured benefit;
 - Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - Increase premiums or lead to the discontinuation of benefits or insurance; or
 - Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - Must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and
 - Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents.

Disability Funding News came out with the following information.

In case you haven't heard, new federal special ed regulations do **not** require parental permission before every single service incident.

But that is the way the Office of Special Education Programs' new guidelines under Part B of the Individuals with Disabilities Education Act initially were interpreted. So now school officials are afraid they can't bill Medicaid unless, for example, they get permission before every individual session of physical therapy or occupational therapy, says Nancy Reder of the Nat'l Assn. of State Directors of Special Education, Inc. But OSEP Director Alexa Posny is saying that isn't so.

The new regs do stipulate that each time a school district proposes accessing parents' Medicaid benefits to provide certain services, it must first obtain the parents' consent, she concedes. But this does not mean that separate written consent is needed for each service session, Posny tells DFN. Rather, one permission slip could suffice for a semester's worth of services or for an entire school year.

Thus, 100 hours of speech therapy could be covered with a signed, written consent form clearly stating how many hours are covered. The key is being specific up front on the duration of services.

Because of this information, it is very important for districts to accurately record the amount, duration and location of services on the IEP. Then the district can get a signed, written consent based on either a semester or an entire school year's worth of services as stated in the IEP.

§300.9 Consent.

Consent means that--

- The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
- If a parent revokes consent, that revocation is not retroactive

WRITTEN AGREEMENT

A written document to amend or modify a child's current IEP may be made by the district and the parents. The district must ensure that the child's IEP team is informed of the changes.

Special Education Programs wants to ensure that districts are able to follow the new regulations, but are also covering procedural safeguards. Since this is a new part of the law and it has not been tested in due process or court proceedings SEP has asked for guidance from our legal consultant, Mountain Plains Regional Resource Center and our federal regulation consultant. They all came back with the same answer, districts should give prior notice. How can this work in your district? See the two possibilities below.

- A parent calls the district and would like to discuss a change to their child's IEP. The district and the parent agree to make a change to the IEP. The district completes a prior notice that states when the parent called, what was discussed and the change that was agreed upon. The amendment is completed and attached to the prior notice and sent to the parent. The prior notice states that the amendment will go into effect on XXXX date, which is after the 5 days prior notice.
- A parent is visiting the school and the district and the parent are discussing a change to the child's IEP. The parent and the district agree to a change. While the parent is at the school, the district completes the amendment and has the parent sign. The district also completes the prior notice which states what they just agreed to. The district explains that the change will go into effect after the 5 days prior notice unless the parent wishes to waive the 5 days prior notice waiting period. The parent signs the waiver right away and the change can go into effect immediately.

REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

- That determination and the reasons for the determination; and

- The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

By completing a prior written notice, the district will have met this requirement as long as the right of the parents to request an assessment is part of the prior written notice.

IEP UPDATES

The DDN Campus IEP and the Word copy on the SEP website have been updated. The IEP TA Guide is close to being completed. We are sorry that it is taking longer to get the IEP TA Guide completed than what we thought. We have lost a staff person and we are trying to get federal requirements completed by February 1st. However, the transition TA Guide has been completed and can be found at <http://www.tslp.org/IEP.htm>. There is a lot of excellent information at this web link please utilize the information and the updated federal transition requirements.

Below you will find information from Linda Turner concerning the DDN Campus IEP and some important information that you need to know if you are utilizing the DDN Campus IEP.

12/06 Updates made to the Online IEP (DDN Campus and SIMSnet)

**The online IEP was loaded prior to the state office previewing the updates. Consequently some errors have been identified and are being updated. In the meantime, the IEP can be used, please make note of the areas that have been updated and where some corrections may be required. You can cross off or write on the IEP after printed. Your file copy is the master copy that is reviewed so anything written on there is what is used for review.

Changes to Printable IEP form Revised 9/06	Impact of IEP revisions to Online IEP
Page 1 – Placement Codes: The early childhood (300 codes) have been updated to reflect new reporting requirements	<p>Least Restrictive Environment: The preschool codes have been updated, however Home 0365 is listed twice, the first Home will be removed to reflect the flow from least restrictive to more restrictive.</p> <p>Additionally, Service Provider Location says (not in the school setting). Service Providers can be located in the school and the section in parenthesis will be removed.</p>
Page 2 – Present levels of performance: Bolded and put a reminder at the bottom of the page of the required components	<p>This information is in the statement of the description of the present levels of performance, please address all items when writing your present levels:</p> <ul style="list-style-type: none"> ○ Skill or Transition Area ○ Strengths and Needs ○ How the student's disability affects his/her involvement/progress in the general education curriculum for the skill area ○ Parent input
Page 3 – Assessment: Changed from four to	Four choices will still be reflected and the

<p>three choices with the selection of assessment accommodations completed later on page 7</p> <ol style="list-style-type: none"> 1. regular assessment with or without accommodations 2. alternate assessment 3. no assessment required 	<p>selection of accommodations will remain the same, having a box to select state and districtwide assessment.</p> <ol style="list-style-type: none"> 1. regular assessment without accommodations 2. regular assessment with accommodations 3. alternate assessment 4. no assessment required <p>For alternate assessment, an inaccurate statement regarding how the language needs relate has been added. Please disregard this statement and cross it off the IEP after printed. It is letter (a). This will be updated so (a) reflects the yes/no choice of if the meet the criteria.</p>
<p>Page 4A and 4B – Measurable Postsecondary Goals: There have been some significant changes to this section.</p>	<p>The transition section has been updated. In the first section Independent Living and Living are listed. The second Living should be Education. You can type the Education information in the Living section and when it prints just cross off Living and write Education for the heading. This is being corrected.</p>
<p>Page 5 – Goals and Objectives: The selection of accommodations and modifications as well as supports for school personnel has been added to this section. Duration has been added to Frequency and Location has been added as well.</p>	<p>Duration has been added as well as location. Location was added in the area that was previously used to type “Other Modifications”. If you have other modifications not listed you can still type that information in the box along with the location. Duration is not currently printing on the form, but is being fixed.</p>
<p>Page 7 – Assessment Accommodations: On this page the team determines whether accommodations are needed on state and district wide assessment by test and subject area.</p>	<p>The accommodation section of the Online IEP is not changing, it will be very important to select the state and district assessment box when applicable and if comments for clarification need to be made they can be entered in the writeable fields or handwritten on the printed form. <u>Please so not select ALL, but select each course that the accommodation will be used for and state and district wide testing if the accommodation will be used as well.</u></p>
<p>Page 8 – Least Restrictive Environment: Participation with non-disabled peers now needs to be completed for all students. Students in the general classroom with modifications are no longer excluded.</p>	<p>This change does not affect the Online IEP, but please make sure you address this section for all students.</p>
<p>Page 8 – Least Restrictive Environment: In Program Options, Home Economics has been changed to Family and Consumer Science. In Non-Academic, Health has been changed to Health Services.</p>	<p>The change is reflected in the update.</p>
<p>Page 8 – Least Restrictive Environment: Reintegration Plan has been removed.</p>	<p>This section has been removed.</p>

SPP/APR UPDATE

South Dakota is required to report to OSEP by February 1, 2007 on the State Performance Plan and Annual Performance Report (SPP/APR). SEP will be sending out district information within the next two weeks. SEP must have a public reporting website that includes all districts and their performance at meeting the targets in the SPP. The public reporting website will be on the SEP website and will include the SPP information as well as 618 OSEP data tables.

SOUTH DAKOTA SPECIAL EDUCATION ARSD UPDATE

Special Education ARSDs will be taken to the State Board of Education (BOE) in January. The updates that are being proposed to the BOE are to make the ARSDs align to the federal regulations. SEP must report to OSEP and all local districts any rule, regulation, or policy that is State-imposed and not required by IDEA or federal regulations. Due to this requirement, part of the rule process was to make sure that the ARSDs did align to the federal requirements.

The ARSDs will be out for public comment in February and March.

STATE APPLICATION FOR FEDERAL FUNDING

The state application for federal funds is due to OSEP by May 4, 2007. Part of the application process includes having the state application out for public viewing for 60 days of which 30 days must be open for public comment. We have just received word that FFY 2007 allocations will not be available by the time we need to publish our application and budget. OSEP is suggesting that we use last year's dollar amounts as estimates. Once the final allocations are available we will need to revise the Use of Funds form to conform with any changes to the allocations.

LD/RTI WORKGROUP

The LD/RtI workgroup met 3 times during November and December to work on incorporating the new federal requirements. We had a large diverse group that came together for this project including general education teachers, administrators, school psychologists, higher education, special education directors, advocacy, special education cooperatives, Oceti Sakowin Education Consortium, Title 1, Reading First, and the math curriculum specialist.

Part of the job of the workgroup was to prepare rules to take to the BOE that were in line with the federal guidelines. Another job was to prepare an RtI procedure guide for districts to use who want to incorporate RtI into the LD eligibility determination process.

The group has been working very hard in a short amount of time to get the information we need to be in compliance for the state application for federal funds.

ELIGIBILITY GUIDE

The Eligibility Guide workgroup will be brought back together again in early spring. At this time we are not ready to take the eligibility guide to the State BOE. We need to make sure that each of the workgroups checks what they have currently completed to see if it follows the final federal regulations and we have to add in the LD/RtI piece. The

assessment piece has been partially updated and is currently with the school psychology graduate students at USD to add more to it.

MONITORING AND GENERAL SUPERVISION

In February, SEP will be updating our state monitoring. **NO SCHOOL DISTRICTS HAVE BEEN SELECTED YET FOR MONITORING FOR THE 2007-2008 SCHOOL YEAR.**

Our selection process will be based on the SPP indicators and on desk audits and/or self-assessments districts will be completing. As soon as we know what our criteria will be we will share the process with district personnel.

Below are some of the items that OSEP expects out of the State's new monitoring systems.

State Monitoring

What are OSEP's expectations for State monitoring?

States must have general supervision systems that focus on improving educational and functional results for infants, toddlers and children with disabilities. In addition, the systems must identify and correct noncompliance.

What monitoring components might a State use to identify noncompliance?

Monitoring components most frequently used by States to identify noncompliance include:

- Self-assessments
- Database with unique identifiers
- Focusing monitoring efforts on priorities
- Review of dispute resolution issues and resolutions
- On-site visits, application/contract review, etc.

When is noncompliance considered to be corrected?

Noncompliance is corrected when the State has documentation that practice has changed and has notified the LEA provider. It is not enough for an Improvement Plan to be submitted or approved. And it is not necessarily enough when the Improvement Plan activities are completed **or** new policies and/or procedures are approved. The State needs to determine from data or other information that the corrective action activities were effective in changing the noncompliant practice.

How is the one-year timeline for correction measured?

- From timely identification of noncompliance, i.e., when the SEP notifies the LEA provider in writing of the noncompliance.
- To SEP's closure of the noncompliance, i.e., when SEP notifies the LEA and documents in writing that the noncompliance is corrected.

1% APPLICATIONS

The review process for the 1% applications has been delayed. Districts will have an opportunity to resubmit information after the review process has been completed. All applicants will receive a checklist regarding initial submission once the review is completed.

FINAL IDEA 2004 REGULATION TRAINING

Mountain Plains Regional Resource Center will be providing an all day training on IDEA 2004 at three locations in South Dakota. This training is being offered free of charge. Please see the agenda below with registration information.

South Dakota Department of Education
Special Education Programs

Individuals with Disabilities Education Act 2004

EHA to IDEA

Access—Accountability—Results

Final IDEA Regulations Training

WHAT TEACHERS AND ADMINISTRATORS NEED TO KNOW

January 16, 2007—Rapid City

Ramkota, Sylvan 1 & 2

January 17, 2007—Chamberlain

Cedar Shores, Wheeler Room

January 18, 2007—Sioux Falls

Holiday Inn City Centre, Starlite Ballroom

Presented by

Lennie Knudtson, Wayne Ball, and John Copenhaver

Purpose —Provide school staff and administrators training and information regarding the federal IDEA 2004 regulations.

Outcomes— Participants will understand the following:

- The major revisions to federal special education regulations
- Procedures for mediations, complaint investigations, resolution meetings, and due process hearings.

REGISTRATION

Register online at: <http://www.doe.sd.gov/oess/specialed/applications/Registration/index.asp>

If you are unable to register online please contact Special Education Programs at 605-773-3678.

AGENDA

8:30–8:45 a.m. Welcome/Introductions

Purpose—Outcomes—Materials

SESSION 1—INTRODUCTION/REVIEW

8:45–9:00 a.m. A Review of New Acronyms and Special Education Terms

9:00–9:30 a.m. A Review of the Reauthorization Process, Definitions, Changes, and Structure of the Regulations

SESSION 2—REVISION IN THE SPECIAL EDUCATION PROCESS

9:30–10:00 p.m. The State Performance Plan—Accountability at All Levels

10:00–10:45 a.m. The Evaluation Process and Determining Eligibility for Special Education and Related Services

10:45–11:00 a.m. Break

11:00–12:00 p.m. Determining Eligibility for Learning Disability

- Rtl
- Discrepancy Model

12:00–1:15 p.m. Lunch

1:15–2:15 p.m. Changes in the Individualized Education Program (IEP)

- Content
- IEP Team
- Membership/Excusal
- Meeting/No meeting

2:15–2:30 p.m. Determining the Least Restrictive Environment (LRE) under IDEA

2:30–2:45 p.m. Break

SESSION 3—PROCEDURAL REQUIREMENTS

2:45–3:30 p.m. Procedural Safeguards and Dispute Resolution

3:30–4:15 p.m. Disciplining Students with Disabilities

- 10-day Rule
- Manifestation Intervention

- Behavior Intervention Plan
- 45-day Rule

4:15–4:30 p.m. Closing Remarks/Questions/Evaluation

If any special accommodations are needed please contact Special Education Programs at 605-773-3678 by January 12th.

2006-2007 PARENT SURVEY

SEP will be making copies of the parent survey for this school year to send out to districts in late February or early March. We will base our numbers on 2006 child count. If you know that you will need more, please let us know.

We would like each district to send the surveys to all of the parents of students with disabilities ages 3 through 21. We will have a sample letter available to include with the surveys, but we would encourage you to personalize your own letter. We need to print the surveys on a heavyweight paper so they can be refolded to return to Mountain Plains Regional Resource Center. We did not use a strong enough paper last summer and some of the surveys were returned damaged. We will also include envelopes for you to put the surveys in when you send to the parents. We will include a postage paid seal on both the survey and the envelopes that we will send out to the districts.

We would like the districts to distribute the surveys in March and April in order for them to be returned to MPRRC by May 15th. This would give us time to do follow-up phone surveys if districts do not receive a high enough percentage of surveys returned.

BATTELLE ONLINE SCORING UPDATES:

The scoring website is up and running. Username and password information has been sent separately to District and Coop Special Education Directors. All students entering Birth to 3 and Part B and all those exiting who have an entrance score to compare progress to must be administered the Battelle and scored online or a paper score report must be submitted to SEP. All students transitioning from Birth to 3/Part C to Part B must have a paper form submitted to SEP even if scored online. However, if you use the online scoring you will not be required to put the raw scores on the paper score report.

An updated score reporting form can be found at:

<http://doe.sd.gov/oess/specialed/SPP/index.asp> under Indicator 7. Please contact Linda Turner if you have any questions regarding your online licenses at Linda.Turner@state.sd.us or call 605-773-6119.

TRAINING REMINDERS:

Dakota STEP-A trainings:

The workshops are scheduled for 9:00 AM - 12:00 PM with registration beginning at 8:30. There will be a second session in the afternoon in Sioux Falls. This PM session will begin with Registration at 12:00 and the training will be from 12:30 PM - 3:30 PM. The dates of the workshops are:

- January 8th - Rapid City - Ramkota
- January 9th - Pierre - Kings Inn
- January 10th - Aberdeen - Ramkota
- January 11th - Sioux Falls - Ramkota (AM and PM sessions)

Battelle Administration and Web based Scoring:

Participants from previous workshops asked for more training on scoring and using the online scoring tool. Attendees will learn the process of scoring the BDI-2 as well as how to score using the online scoring site. Information will also be provided regarding how the BDI-2 meets the requirements for reporting progress as part of the State Performance Plan.

The workshop is scheduled from 9:30 to 3:30 with lunch on your own.

January 17

**Rapid City: Holiday Inn /Rushmore Plaza Salon D
or
Sioux Falls: Ramada Inn & Suites Gallery #3**

January 18

Chamberlain: Cedar Shores Wet Lands & Breakwater

This workshop is open to those who have received an online scoring license and is limited to 40 participants per site.

To register for either workshop, contact Linda.Turner@state.sd.us or call 605-773-6119
